

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3724 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIKHUBHAI CHHANUBHAI RATHAWA

Versus

NJ DAVE

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/07/96

ORAL JUDGEMENT

Petitioner Bhikhubhai Chhanubhai Rathava in this petitioner under Article 226 of the Constitution of India, has challenged the legality and validity of the order of his detention dated 20.4.1996 passed under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the 'Act') by the District Magistrate, Gandhinagar (hereinafter referred to

as the 'detaining authority').

Considering the grounds of detention supplied to the detenu, the detaining authority was of the view to preventing the detenu from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community found it necessary to detain the detenu and consequently, the authority has passed the impugned order. Since the petition is required to be allowed on the first contention of Mr. Prajapati for the petitioner, it is neither necessary to state the allegations of facts stated in the grounds of detention or to refer to and to deal with the other contentions raised in the petition. Mr. Prajapati submitted that the detaining authority has not decided the representation within the period of 12 days allotted to him, the order of detention vitiates. In the present case, the petitioner has made a representation to the District Magistrate, the detaining authority, on 24.4.1996 which is received by the authority on 25.4.1996. In the said representation, the detenu has requested the detaining authority to supply the legible copies of certain documents and also the supply the translated copies of the english documents into gujarati. It is stated in the representation that after receipt of these documents, further effective representation will be made against the order and grounds of detention. It was requested by the detenu to revoke the order of detention and if the authority is prepared to revoking the order of detention, the documents requested to supply as above, are not necessary to supply. Now in the instant case, the detaining authority as stated above, through received the representation on 25.4.1996 by its reply dated 2.5.1996 only acceded the request of supply of legible copies of the documents. With respect to the translated version of the documents, it was stated by him that most of the documents are in Gujarati and, since the english documents of the chalan of purchase of petrol and diesel, and since the detenu has knowledge about it, it is not necessary to supply the same. The detaining authority has not stated anything about the request for revocation of the order. Therefore, the grievance is made by Mr. Prajapati that the detaining authority was duty bound to consider the representation including the request to revoke the order, and since, no decision is taken by him, the representation has not been decided by the detaining authority. As can be seen from the provisions of section 3 of the Act that if an order of detention is passed by the authorised officer, in the instant case, the District Magistrate, he shall report the same as early as possible without any delay and the

State Government approves the same within 12 days from the date of its making. In other words, the effect would be that the authorised officer should report as early as possible from the date of the execution of the order of detention to the Government and the order remains valid and in force for 12 days from the date of execution. If the order is not approved by the State Government within 12 days, the order of detention shall stand lapsed. For continuance after 12 days approval is mandatory and remains as fence till it is approved by the Advisory Board. If the Board disapproves, the State Government shall release the detenu forthwith. It is a condition precedent. If the Board approves it then the State Government shall confirm it. The detaining authority has no express power under the PASA Act to revoke the order of detention after the approval given by the State Government. The power to rescind the detention order, therefore, would be available to the authorised officer under Sec. 21 of the General Clause Act only during its operation for 12 days from the date of execution of the detention order or approval by the State Government whichever is later. The general power of revocation was conferred only on the State Government, that too in writing for reasons to be recorded in that behalf. By necessary implication flowing from S.3(3) and concomitant result is that the authorised officer has no express power or general power under S.21 of the General Clauses Act to revoke or rescind or modify the order after the State Government approved of it under sub-sec. (3) of S. 3 read with S.3(1). The State Government alone thereafter has power to revoke or rescind the order of detention either on representation under article 22(5) of the Constitution of India or under S. 15 of PASA. In view of this, the detaining authority in the instant case, within 12 days was entitled to consider the representation and was under obligation to consider the representation submitted by the detenu and was even competent to decide the question of revocation of the order of detention. Since the request for revocation is not at all considered by the detaining authority, the obvious conclusion is that the representation of the detenu is not considered and, therefore, the detenu is denied his valuable rights under Article 22(5) of the Constitution of India and, therefore, continuous detention is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 20.4.1996 is quashed and set aside. The detenu Bhikhubhai Chhanubhai Rathava, is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is

made absolute accordingly with no order as to costs.
